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Wills and Trusts

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WILLS AND TRUSTS

I. Contracts To Will

In the period under review, the South Carolina Supreme Court decided two cases concerning alleged contracts to make wills. The court reiterated existing principles of law, as both cases turned on the sufficiency of the evidence.

In *Caulder v. Knox*[1] Anna Caulder,[2] the original plaintiff, was raised from infancy by her aunt, Anna Welsh, the owner of a farm. Mrs. Caulder contended that she entered an oral contract with L. L. Knox, Mrs. Welsh's son. They allegedly agreed that if Mrs. Caulder would care for the ailing Mrs. Welsh, then Knox would arrange for Mrs. Caulder and her children to receive the benefit of the farm. Relying on this agreement, Mrs. Caulder moved into the Welsh home and cared for her aunt until her death. After Mrs. Welsh's death, Knox became the sole owner of the farm. He subsequently married the defendant, Edna Knox. Six years after the marriage, he died intestate, having made no provision to give the farm to Mrs. Caulder.

This action arose when Mrs. Caulder sought specific performance of the alleged oral contract. Her husband, who was present at the alleged making of the contract, testified that Knox made the promise.[3] Three other citizens of the community testified that on different occasions Knox had expressed his intention that Mrs. Caulder was to receive the farm at his death.

The South Carolina Supreme Court in reviewing the evidence cited the following rule from *Young v. Levy*[4] as controlling in this case:

> The ordinary rule of preponderance or greater weight of the evidence, applicable to civil actions generally, is insufficient in this class of cases; some Courts require proof beyond a reasonable doubt, as on the criminal

1. 251 S.C. 337, 162 S.E.2d 262 (1968).
2. Hereinafter referred to as Mrs. Caulder.
3. Raymond Caulder testified that the words of Knox were as follows: [I]f you will come and look after Mama while I am away in the daytime at work, when I am through with the place, I will have it fixed where you will reap the benefit of it, and if you are not living then, I will have it fixed where your children will reap the benefit.
4. 206 S.C. 1, 32 S.E.2d 889 (1944).

> side; universally a higher degree of conviction of truth is necessary than in the usual civil case.[5]

Reviewing the evidence in the light of this rule, the court concluded that the plaintiff had simply not proved by "clear, cogent and convincing"[6] testimony that a contract was ever consummated. The testimony of the three citizens carried little weight, for the court stated that "[a] mere declaration of intent will not give rise to a contract."[7]

Havird v. Schissell[8] concerned an alleged oral contract to make mutual wills. In 1961, the plaintiff, her brother Lee Havird, and another sister executed wills leaving their respective estates to each other. After the death of the sister, in 1964, the plaintiff and her brother again executed wills leaving their estates to each other. In 1965 Lee Havird died, having executed a later will under which the plaintiff received nothing. She contended that the wills made in 1964 were made in compliance with and in furtherance of an oral contract entered into in 1961, and prayed for specific performance of that alleged contract.

The South Carolina Supreme Court, in refusing to grant the requested relief, reaffirmed the standard of "clear, cogent and convincing" proof. The mere existence of mutual wills is not proof of a *contract*, and a mere agreement to make mutual wills falls far short of a contract to keep them in force.[9]

II. UNDUE INFLUENCE

In *Havird v. Schissell*,[10] the later of two cases between the same parties, the court also dealt with the degree of proof necessary to upset a will on the grounds of undue influence. Corrie Lei Havird leveled a second attack against her brother's will. Approximately one month before Havird's death the will was executed, leaving his entire estate to his illegitimate sons and their children.

Plaintiff contended that the later will was the product of undue influence exerted by the sons. The principal evidence was that one son persuaded him to enter the hospital after every-

5. Caulder v. Knox, 251 S.C. 337, 340, 162 S.E.2d 262, 264 (1968), *citing* Young v. Levy, 206 S.C. 1, 12, 32 S.E.2d 889, 893 (1944).
6. Caulder v. Knox, 251 S.C. 337, 347, 162 S.E.2d 262, 267 (1968).
7. *Id.* at 345, 162 S.E.2d 266.
8. 251 S.C. 416, 162 S.E.2d 877 (1968).
9. Looper v. Whitaker, 231 S.C. 219, 222, 98 S.E.2d 266, 267 (1957).
10. 166 S.E.2d 801 (S.C. 1969).

one else had tried and failed. Also, while Mr. Havird was in the hospital his sons visited him frequently, on occasions performing minor errands for him.

The court cited the rule of *Smith v. Whetstone*[11] as controlling in this case:

> Undue influence may be proved by circumstantial evidence, "[but] the circumstances relied on to show it must be such as taken together point unmistakably and convincingly to the fact that the mind of the testator was subjected to that of some other person, so the will is that of the latter and not of the former."[12]

After viewing all the evidence in the light most favorable to the contestants of the will, the court found that there was not enough evidence to raise a jury question. Therefore, the directed verdict for the defendants was affirmed.

III. INSANE DELUSIONS

Corrie Lei Havird also requested an instruction to the jury on the issue of monomania, or an insane delusion.[13] In brief, an insane delusion which affects testamentary capacity is an idea or belief which has no basis in fact, but which is nevertheless adhered to by the testator against the weight of reason and evidence. The will is invalidated only if it is the product of the delusion.[14] The trial judge refused to make the charge and the plaintiff appealed.

The South Carolina Supreme Court affirmed the trial court's refusal, stating that the evidence did not warrant a charge on monomania.[15] Although the court conceded that the doctrine of insane delusions had not been applied in this state, it declined to comment on whether it would be barred by stare decisis from applying the doctrine in an appropriate case.

In the light of *In Re Washington's Estate*,[16] it would appear that a strict adherence to the rule of stare decisis would require

11. 209 S.C. 78, 39 S.E.2d 127 (1946).
12. Havird v. Schissell, 166 S.E.2d 801, 804 (S.C. 1969), *quoting* Smith v. Whetstone, 209 S.C. 78, 83, 39 S.E.2d 127, 129 (1946).
13. 166 S.E.2d 801 (S.C. 1969).
14. Havird v. Schissell, 166 S.E.2d 801, 807 (S.C. 1969).
15. *Id.* at 807. The testimony of a Mrs. Scurry was the only evidence offered to prove that Mr. Havird was suffering from insane delusions. She testified that before Mr. Havird was taken to the hospital, he was at times irrational, and expressed the belief that people were trying to cheat and kill him. No evidence was presented as to what people Mr. Havird suspected, or whether his fears were real or imagined.
16. 212 S.C. 379, 46 S.E.2d 287 (1948).

the court not to recognize the doctrine of insane delusions as applicable in this state. In that case, as in the present one, the supreme court upheld the trial court's refusal to grant instructions on monomania. The court felt that this doctrine would open up a new area of attack on wills and would only serve to complicate existing law. The court recognized authority for the doctrine in other jurisdictions but deliberately declined to accept that authority.

IV. LEGISLATION: UNIFORM ANATOMICAL GIFT ACT[17]

This act provides for gift by will of all or part of the testator's body for medical purposes. Two sections of the act are pertinent to this article.

One section of the act provides for the automatic effectiveness of the gift on the testator's death without probate of the will. If the will is then declared invalid for testamentary reasons, the gift, if acted upon in good faith, is still valid.[18]

The act also provides for the revocation of the gift by destroying the original and all executed copies of the will, provided it has not been delivered to the donee. If the will has been delivered, the donor may revoke or amend his gift in several ways. An oral or written statement sufficiently proved and communicated to the donee will revoke the gift. Or, the gift may be revoked in the usual manner provided for the amendment or revocation of wills.[19]

V. TRUSTS: PRINCIPAL AND INCOME

In the case of *South Carolina National Bank v. Arrington*,[20] the South Carolina Supreme Court was faced with the problem of allocation of receipts of a trust between principal and income. John W. Arrington died leaving a will which, after the bequest of certain personal property to his wife, provided for the rest and residue of his estate to be held in trust. After the death of all of the income beneficiaries, the trust was to terminate and the corpus and any undistributed income was to be paid to the issue of his three sons, *per stirpes*.

This case arose when the bank sought a judgment declaring that capital gains from the sale of stocks, stock dividends, and

17. R507, July 1, 1969.
18. R507 § 4(a) (July 1, 1969).
19. R507 § 6 (July 1, 1969).
20. 165 S.E.2d 77 (S.C. 1968).

stock splits received by the trust should be distributed to the remaindermen. The widow of one of the income beneficiaries answered, alleging that the capital gains should be apportioned between the income beneficiaries and the remaindermen, consistent with *Cothran v. South Carolina National Bank*.[21] The master held that Arrington in his will expressed an intent that all such gains should be treated as corpus and that the trustee could distribute them to the remaindermen. The report of the master was affirmed and the widow appealed.

The supreme court dealt first with the stock splits. The Pennsylvania case of *In Re Trust Estate of Pew*,[22] which held that stock splits should not be apportioned between the life tenant of the trust and the remaindermen but should be allocated to corpus, was endorsed by the court.[23] By so holding, the case law concerning stock splits occurring prior to the Revised Uniform Principal and Income Act was brought into line with that statutory rule.[24]

In considering the capital gains from stock sales, the court held that the testator's intent as expressed in his will was that such proceeds should be treated as corpus. The will gave the trustees power to sell securities but directed them to hold and reinvest the proceeds. Since distribution was prohibited, the court concluded that the testator intended such proceeds to be absorbed into the corpus.

In considering stock dividends, however, the court held that the testator had evinced no intent that such dividends should be allocated to corpus. The item of the will giving the trustees the power to deal with the trust estate as the testator might have done if living, was not construed to give the trustees the power to allocate proceeds between principal and income. The court concluded that since no intent was expressed in the will, the stock dividends should be apportioned according to the *Cothran* decision.[25]

21. 242 S.C. 80, 130 S.E.2d 177 (1963).
22. 398 Pa. 523, 158 A.2d 552 (1960).
23. South Carolina National Bank v. Arrington, 165 S.E.2d 77, 81 (S.C. 1968), *citing* In Re Trust Estate of Pew, 398 Pa. 523, 530, 158 A.2d 552, 556 (1960). The reason the court cited the allocating stock splits to corpus was that a split does not represent a division of corporate earnings or profits. A simple division of the shares of stock takes place without any change of the earned surplus or capital accounts on the corporate books.
24. S.C. CODE ANN. § 67-509 (a) (Supp. 1968). The Revised Uniform Principal and Income Act treats stock splits as principal.
25. Cothran v. South Carolina National Bank, 242 S.C. 80, 90, 130 S.E.2d 177, 181 (1963), *citing* the Pennsylvania rule as expressed in In Re Nird-

The South Carolina National Bank presented voluminous testimony aimed at overthrowing the *Cothran* decision. Its primary contention was that the common law rule should be brought into concert with the Revised Uniform Principal and Income Act. The court rejected the evidence illustrating the inequities and unreasonable burdens caused by the *Cothran* case and declined to overthrow a rule established by prior decisions.[26]

The bank also contended that since the stock dividends were not paid to the income beneficiary during his lifetime, the undistributed income should go to the remaindermen. The basis for this contention was that the will provided for any accumulation of undistributed income to be paid to the remaindermen upon the termination of the trust. The court dismissed this contention by stating that the term "undistributed income" meant income which had been properly accumulated, not accumulated because of the trustee's failure to pay out the income in accordance with the terms of the trust.[27]

According to the excellent dissent of Justice Bussey, if the *Cothran* case had been as fully argued as the present case, it "would have at least been to some extent modified."[28] He fully realized that the Pennsylvania rule can work hardships and inequities and put an undue burden upon the trust estate itself, "results clearly not contemplated or intended"[29] by the testator.

Nevertheless, the court reaffirmed the *Cothran* decision and also adopted the Pennsylvania rule that stock splits should be treated as corpus. Thus, in this jurisdiction, the *Cothran* case controls prior to the effective date of the Revised Uniform Principal and Income Act.

VI. TRUSTS: COMMISSIONS

In *Dunlap v. Peoples National Bank*,[30] the settlor placed a large amount of property in a revocable trust with the Peoples

linger's Estate, 290 Pa. 457, 139 A. 200 (1927). The *Cothran* decision requires the trustee to apportion the stock dividend so that the intact value of the trust's original investment in the stock is unchanged, and then to pay the remainder of the stock dividend to the life income beneficiary.

26. South Carolina National Bank v. Arrington, 165 S.E.2d 77, 82 (S.C. 1968). The failure to overrule *Cothran* leaves two distinctly different rules applicable to stock dividends. Those dividends received before the effective date of the Revised Uniform Principal and Income Act are to be apportioned according to *Cothran*. Those dividends received after the effective date are to be allocated to corpus according to the terms of that act.

27. South Carolina National Bank v. Arrington, 165 S.E.2d 77, 83 (S.C. 1968).

28. *Id.* at 86 (dissenting opinion).

29. *Id.* at 87 (dissenting opinion).

30. 166 S.E.2d 313 (S.C. 1969).

National Bank as trustee. The trust agreement provided for a set schedule of fees. More than ten years after the creation of the trust, the settlor was adjudged incompetent. The bank was then appointed committee for those assets of the settlor not subject to the trust, and was further authorized to continue as trustee for the trust estate. When the settlor died, the bank sought to be discharged as committee and trustee and petitioned the court to award the statutory committee commissions for both the trusts and committee assets.

In an unusual decision that cited no cases on this point the supreme court reviewed the master's report and the testimony that comprised the committeeship hearing. The court held that the trustee was entitled only to the agreed commission on the trust estate.[31]

In the master's committee hearing, a trust officer of the bank testified to the willingness of the bank to continue as trustee at the same rate of compensation provided in the trust instrument. The master then ratified the trust agreement and separately appointed the bank as committee. The bank was required to submit two separate accountings to the court, one as trustee and another as committee. In light of this evidence, the supreme court concluded that the trustee was entitled only to the agreed compensation for handling the trust estate.

VII. TRUSTS: FORFEITURES

In the case of *Hardin v. Horger*,[32] a local congregation seceded from The Methodist Church and affiliated with another conference. Officials of The Methodist Church brought an action to enjoin the local congregation from using or disposing of the church property except as members of The Methodist Church. The local church contended that the Annual Conference's handling of an affair involving immoral conduct by a minister was not consistent with the proper action contemplated by the Discipline of The Methodist Church. The local congregation asserted that under the provisions of a trust clause[33] in the deed

31. The commission set in the trust instrument was substantially smaller than the statutory committee's commission would have been.
32. 166 S.E.2d 215 (S.C. 1969).
33. *Id.* at 217. The deed to the church property contained the following trust clause:

> In trust that the said premises shall be used, kept, and maintained and disposed of as a place of divine worship for the use of the ministry and membership of The Methodist Episcopal Church,

by which the property was acquired, The Methodist Church forfeited its right to the property.

The supreme court held that The Methodist Church, its officials, ministry and membership were entitled to the church property. The primary consideration in this decision was the absence in the deed to the property of conditions or conditions subsequent sufficient to create a forfeiture. The court stated that it is the rule in this state that forfeitures will be allowed only where the intent is clear and there is no other reasonable construction of the deed. [34] The court further concluded that under the plain language of the deed, The Methodist Church was the beneficiary of the trust clause and the local congregation's right to the church property was contingent upon its retaining membership in The Methodist Church.

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South, subject to the Discipline, usage and ministerial appointments of the said Church, as from time to time authorized and declared by the General Conference of the said Church, and the Annual Conference within whose bounds the said premises are situated.

The Methodist Church is the legal successor of the Methodist Episcopal Church, South. Turbeville v. Morris, 203 S.C. 287, 317, 26 S.E.2d 821, 833 (1943).

34. Hardin v. Horger, 166 S.E.2d 215, 218 (S.C. 1969).